

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF THE DENIAL)
OF A SUBSTANTIAL DEVELOPMENT)
PERMIT AND VARIANCE BY MASON)
COUNTY TO GEORGE KARGIANIS)
GEORGE KARGIANIS,)
Appellant,)
v.)
MASON COUNTY AND STATE OF)
WASHINGTON, DEPARTMENT OF)
ECOLOGY,)
Respondents.)

SHB No. 78-44

FINAL FINDINGS OF
FACT, CONCLUSIONS
OF LAW AND ORDER

This matter, an appeal from a denial of an application for a shoreline substantial development permit and variance by Mason County, came before the Shorelines Hearings Board, David Akana, Chairman, Chris Smith, Rodney Kerslake, and Richard A. O'Neal, in Lacey, Washington, on August 1, 1979. Nancy E. Curington, Administrator, presided.

Appellant represented himself. Respondent Mason County

1 was represented by John Buckwalter, Deputy Prosecutor.
2 Respondent Department of Ecology was represented by Robert V.
3 Jensen, Assistant Attorney General.

4 Having heard the testimony, having examined the exhibits,
5 having considered the parties' contentions and arguments, and
6 being fully advised, the Shorelines Hearings Board makes these

7 FINDINGS OF FACT

8 I

9 This matter arises from the denial of an application by
10 appellant for a shoreline substantial development permit and
11 variance by Mason County for removal of the existing bulkhead
12 and fill, and construction of a private residence on piling on
13 the south shore of Hood Canal, a shoreline of statewide
14 significance. Appellant appealed such denial to this Board.

15 II

16 Appellant owns property (hereinafter referred to as
17 "site") along the south shore of Hood Canal on both sides of
18 State Highway 106. The portion of the site lying between the
19 highway and the water has a bulkhead and sundeck and space in
20 which to park an automobile. Across the highway, at the base
21 of a steep hill, stands a summer cabin approximately forty to
22 fifty years old. The hill, which is not well drained, has been
23 unstable for several years. A recent slide damaged the cabin;
24 the damage has since been repaired.

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III

There are no bulkheaded properties within 400 feet in either direction from the site. There are presently no structures on the waterward side of the highway in the immediate vicinity except a neighboring pier; there is a view of Hood Canal from the highway for about 800 feet, with no manmade obstruction. Since the passage of the Shoreline Management Act in 1971, there has been no over-water construction of residences on Hood Canal.

IV

The site is near Twanoh State Park, where numerous recreational boaters gather for use of its facilities and the surrounding waters. Fish runs of chum, coho, steelhead, cutthroat trout and other species pass the site. The sand and gravel beach sustains a large population of mollusks, such as clams, snails, etc. Any structure on pilings would affect navigation, fish runs and shellfish on the beach.

V

Appellant proposes to remove the existing bulkhead, thereby returning the beach to its original character, and construct a summer cabin with 1,050 square feet of living space on two levels. The cabin would be on piling entirely over the tidelands. The highway side of the structure would lie five feet seaward from the mean higher high water mark and the structure would extend forty-three feet horizontally from that line. The highway right-of-way is located substantially less than 30 feet inland from the mean higher high water line.

VI

The Mason County Shoreline Master Plan (hereinafter referred to as "SMP") designates the general area of the proposed development as Urban Residential. However, the SMP further provides that "those areas of the marine shorelines where the average width of the land area between the line of mean higher high tide and the right-of-way line of an adjacent public highway is thirty feet or less shall be considered Conservancy when, in the judgment of the Administrator or the Advisory Board, said shoreline areas are undeveloped or substantially undeveloped." (Section .24.040). The Administrator considered that the site was in a Conservancy environment; however, the Mason County Shorelines Advisory Board later concluded that the site was in an Urban Residential environment and recommended approval of the permit. The Board of County Commissioners denied the permit request, apparently adopting the Administrator's conclusions.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

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II

The substantial development permit application at issue herein is tested for consistency with the Mason County SMP and the provisions of the Shoreline Management Act (SMA). RCW 90.58.140(2)(b). Additionally, in order for the requested variance to issue, the SMP provisions relating to variances must be met. Section .28.020.¹

III

Although private residences constructed on "wetlands" are exempt from the requirements for a substantial development permit (Section .12.060), the proposed summer residence on pilings will not be constructed on the "wetlands" but over the tidelands. Thus a substantial development permit is required by Section .08.220, .12.060.

IV

The SMP provides that construction of residences, etc. on docks or piers over the water, in both the urban environment and the conservancy environment, are "subject to the use regulations governing bulkheads, with regard to the placement of the structure". (.16.200(A)(3)) Because there are no bulkheaded properties within 350 feet on either side of the site, there is no "denominator bulkhead" (any existing bulkhead within 350 feet) In such a case the SMP provides that the outermost face of a proposed bulkhead of vertical construction

1. In order for the variance to be approved, the DOE regulations, WAC 173-14-150, must be met.
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1 must be placed no farther seaward than that tidal elevation
2 which lies 3.0 vertical feet below mean higher high tide or in
3 the case of sloping construction, 5.5 vertical feet below the
4 line of mean higher high tide. Appellant accordingly contends
5 that his proposed residence on pilings would comply with the
6 SMP's criteria since the pilings would be within the
7 restrictions on placement of bulkheads. However, the SMP
8 states that piers and docks are not compatible with a
9 Conservancy Environment, and indicates a preference for the
10 construction of community piers and docks in the urban
11 environment. .16.200(C)(1), .16.200(A)(1). In the instant
12 case, appellant's proposal is not for a community pier, but for
13 a private residence on pilings.

14 V

15 Appellant contends that the site of the proposed cabin is
16 designated "Urban Residential" in the SMP, and is therefore
17 subject to the restrictions of the SMP relating to that
18 designation. The county contends that the proposed building
19 would be located in a conservancy environment designation.
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1 However, the Board need not decide which designation is
2 applicable, since the proposal does not meet the criteria of
3 the Urban Residential environment, which are less restrictive
4 than those of the Conservancy designation.

5 The Urban Residential environment of the SMP requires
6 inter alia, 1) that new construction be aesthetically
7 compatible with the natural surroundings and not degrade
8 existing uses, and 2) that the minimum setback for buildings be
9 fifteen feet from the line of ordinary high water, provided
10 that structures shall not extend beyond the common line of
11 neighboring structures, and new construction not substantially
12 reduce the view of neighboring structures.

13 The proposed structure would impair the presently
14 unobstructed view in that portion of Hood Canal, and restrict
15 the public right of navigation over the tidelands (See SHB No.
16 153).

17 The proposed structure, by being entirely on piling on the
18 waterward side of the high water mark, is not in conformance
19 with the fifteen foot minimum setback requirements of the SMP
20 for the Urban Residential designation. Further, since there
21 are no neighboring residences on the water side of the road,
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1 the proposed cabin would extend beyond the common line of the
2 neighboring structures. Accordingly, the county's action
3 denying a substantial development permit was correct and should
4 be affirmed unless the SMP variance criteria for a setback
5 could be met.

6 V

7 Assuming the designation of the site to be Urban
8 Residential, the appellant would need a variance for this
9 proposal. Chapter .28.020 of the SMP provides for variances,
10 in order "to grant relief when there are practical difficulties
11 or unnecessary hardships in the way of carrying out the strict
12 letter" of the SMP. In order to grant a variance, in an Urban
13 Residential designation the applicant must show, inter alia,
14 that the hardship to be encountered is "specifically related to
15 the property of the applicant," that the variance granted would
16 be in harmony with the general purpose and intent of the SMP,
17 and that the public welfare and interest would be preserved.
18 In general, the applicant must show that he/she cannot make any
19 reasonable use of the property if the SMP is strictly applied.

20 Appellant herein has failed to show that such requirements
21 are met. The appellant could continue to use his property as
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he has in the past; although a new summer cabin may be preferable to the appellant, there has been no showing that both the existing sundeck and cabin could not continue to be used by the appellant. If the variance were granted, appellant would have two residences rather than the present one. Nor does the appellant's property appear to be unique; the neighboring properties are also backed by the poorly drained hillside and are also bisected by the highway. The proposed residence on piling is also not in the public welfare or interest, since the public view of Hood Canal from State Highway 106 will be obstructed; the cumulative impact of similar such projects would greatly affect view². Thus, even if the site is considered in an Urban Residential environment the application for a variance would have to be denied.

Finally, irrespective of the SMP environment designation, the proposal residence constructed on the tidelands would set an undesirable precedent for new construction on shorelines of statewide significance and would infringe upon the public right of navigation without providing a corresponding public benefit. Such a proposal is inconsistent with the policy of the SMA, RCW 90.58.020.

2. Under WAC 173-14-150(4) consideration must also be given to the cumulative impact of additional requests for similar proposals in order to assess the total impact of such variances if all were granted.

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VI

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

The denial of the shoreline substantial development permit application by Mason County is affirmed.

DATED this 1st day of ~~September~~ ^{October}, 1979.

SHORELINES HEARINGS BOARD


DAVID AKANA, Member


CHRIS SMITH, Member


RODNEY KERSLAKE, Member


RICHARD A. O'NEAL, Member

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